

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEDUCTION ALLOWED FOR CHARITABLE
5 CONTRIBUTIONS OF ARTWORK IN COMPUTING NET INCOME; BASING THE DEDUCTION ON THE FAIR
6 MARKET VALUE OF ARTWORK CONTRIBUTED BY AN ARTIST TO A CHARITABLE ORGANIZATION;
7 REQUIRING SUBSTANTIATION OF THE FAIR MARKET VALUE; AMENDING SECTIONS 15-30-121 AND
8 15-31-114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
9 APPLICABILITY DATE."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12

13 **Section 1.** Section 15-30-121, MCA, is amended to read:

14 **"15-30-121. Deductions allowed in computing net income.** (1) In computing net income, there
15 are allowed as deductions:

16 (a) the items referred to in sections 161, including the contributions referred to in
17 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections
18 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

19 (i) items provided for in 15-30-123;

20 (ii) state income tax paid;

21 (iii) premium payments for medical care as provided in subsection (1)(g)(i);

22 (iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

23 (b) federal income tax paid within the tax year;

24 (c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through
25 (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through
26 (1)(c)(vi), as follows:

27 (i) expenses for household and dependent care services necessary for gainful employment incurred
28 for:

29 (A) a dependent under 15 years of age for whom an exemption can be claimed;

30 (B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross

1 income do not apply, who is unable to provide self-care because of physical or mental illness; and
2 (C) a spouse who is unable to provide self-care because of physical or mental illness;
3 (ii) employment-related expenses incurred for the following services, but only if the expenses are
4 incurred to enable the taxpayer to be gainfully employed:
5 (A) household services that are attributable to the care of the qualifying individual; and
6 (B) care of an individual who qualifies under subsection (1)(c)(i);
7 (iii) expenses incurred in maintaining a household if over half of the cost of maintaining the
8 household is furnished by an individual or, if the individual is married during the applicable period, is
9 furnished by the individual and the individual's spouse;
10 (iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following
11 limitations:
12 (A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred
13 during the year only to the extent that the expenses do not exceed \$4,800;
14 (B) expenses for services in the household are deductible under subsection (1)(c)(i) for
15 employment-related expenses only if they are incurred for services in the taxpayer's household, except
16 that employment-related expenses incurred for services outside the taxpayer's household are deductible,
17 but only if incurred for the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to
18 the extent that the expenses incurred during the year do not exceed:
19 (I) \$2,400 in the case of one qualifying individual;
20 (II) \$3,600 in the case of two qualifying individuals; and
21 (III) \$4,800 in the case of three or more qualifying individuals;
22 (v) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year
23 during which the expenses are incurred, the amount of the employment-related expenses incurred, to be
24 reduced by one-half of the excess of the combined adjusted gross income over \$18,000;
25 (vi) for purposes of this subsection (1)(c):
26 (A) married couples shall file a joint return or file separately on the same form;
27 (B) if the taxpayer is married during any period of the tax year, employment-related expenses
28 incurred are deductible only if:
29 (I) both spouses are gainfully employed, in which case the expenses are deductible only to the
30 extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by the taxpayer, except premiums deducted in determining Montana adjusted gross income, or for which a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) the benefit of the taxpayer for tax years beginning after December 31, 1994; or

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996;

(h) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159; ~~and~~

(i) light vehicle registration fees, as provided for in 61-3-560 through 61-3-562, paid during the tax year; and

(j) the fair market value of charitable contributions made in accordance with section 170 of the Internal Revenue Code (26 U.S.C. 170) by an artist of the artist's original artwork or prints or

1 reproductions of the original artwork. The deduction allowed under this subsection (1)(j) is in lieu of any
2 other deduction allowed or allowable for the charitable contribution of artwork. Fair market value of the
3 artwork is the value received by the donee organization at the time of sale of the artwork or the appraised
4 value of artwork at the time of receipt. The value of the sale or appraised value must be substantiated in
5 writing by the donee organization.

6 (2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care
7 home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's
8 own child and at least one unrelated child in the ordinary course of business may deduct
9 employment-related expenses considered to have been paid for the care of the child.

10 (b) The amount of employment-related expenses considered to have been paid by the taxpayer
11 is equal to the amount that the taxpayer charges for the care of a child of the same age for the same
12 number of hours of care. The employment-related expenses apply regardless of whether any expenses
13 actually have been paid. Employment-related expenses may not exceed the amounts specified in
14 subsection (1)(c)(iv)(B).

15 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the
16 deduction under this subsection (2). (Subsection (1)(h) terminates on occurrence of contingency--sec. 12,
17 Ch. 808, L. 1991.)"

18

19 **Section 2.** Section 15-31-114, MCA, is amended to read:

20 **"15-31-114. Deductions allowed in computing income.** (1) In computing the net income, the
21 following deductions are allowed from the gross income received by the corporation within the year from
22 all sources:

23 (a) all the ordinary and necessary expenses paid or incurred during the ~~taxable~~ tax year in the
24 maintenance and operation of its business and properties, including reasonable allowance for salaries for
25 personal services actually rendered, subject to the limitation contained in this section, and rentals or other
26 payments required to be made as a condition to the continued use or possession of property to which the
27 corporation has not taken or is not taking title or in which it has no equity. A deduction is not allowed for
28 salaries paid upon which the recipient has not paid Montana state income tax. However, when domestic
29 corporations are taxed on income derived from outside the state, salaries of officers paid in connection
30 with securing the income are deductible.

(b) (i) all losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business. The allowance is determined according to the provisions of section 167 of the Internal Revenue Code in effect with respect to the ~~taxable~~ tax year. All elections for depreciation must be the same as the elections made for federal income tax purposes. A deduction is not allowed for any amount paid out for any buildings, permanent improvements, or betterments made to increase the value of any property or estate, and a deduction may not be made for any amount of expense of restoring property or making good the exhaustion of property for which an allowance is or has been made. A depreciation or amortization deduction is not allowed on a title plant as defined in 33-25-105(15).

(ii) There is allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of 15-31-119.

(c) in the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements. The reasonable allowance must be determined according to the provisions of the Internal Revenue Code in effect for the ~~taxable~~ tax year. All elections made under the Internal Revenue Code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes must be the same as the elections made for federal income tax purposes.

(d) ~~The~~ the amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived. Interest may not be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance, or improvement of property or for the conduct of business unless the income from the property or business would be taxable under this part.

(e) (i) taxes paid within the year, except the following:

(A) taxes imposed by this part;

(B) taxes assessed against local benefits of a kind tending to increase the value of the property assessed;

(C) taxes on or according to or measured by net income or profits imposed by authority of the government of the United States;

(D) taxes imposed by any other state or country upon or measured by net income or profits.

(ii) Taxes deductible under this part must be construed to include taxes imposed by any county, school district, or municipality of this state.

(f) that portion of an energy-related investment allowed as a deduction under 15-32-103;

(g) (i) except as provided in subsection (1)(g)(ii), charitable contributions, including artwork,
subject to the conditions of 15-30-121(1)(j), and gifts that qualify for deduction under section 170 of the
Internal Revenue Code, as amended.

(ii) The public service commission may not allow in the rate base of a regulated corporation the
inclusion of contributions made under this subsection.

(2) In lieu of the deduction allowed under subsection (1)(g), the taxpayer may deduct the fair
market value, not to exceed 30% of the taxpayer's net income, of a computer or other sophisticated
technological equipment or apparatus intended for use with the computer donated to an elementary,
secondary, or accredited postsecondary school located in Montana if:

(a) the contribution is made no later than 5 years after the manufacture of the donated property
is substantially completed;

(b) the property is not transferred by the donee in exchange for money, other property, or
services; and

(c) the taxpayer receives a written statement from the donee in which the donee agrees to accept
the property and representing that the use and disposition of the property will be in accordance with the
provisions of subsection (2)(b).

(3) In the case of a regulated investment company or a fund of a regulated investment company,
as defined in section 851(a) or 851(h) of the Internal Revenue Code of 1986, as that section may be
amended or renumbered, there is allowed a deduction for dividends paid, as defined in section 561 of the
Internal Revenue Code of 1986, as that section may be amended or renumbered, except that the deduction
for dividends is not allowed with respect to dividends attributable to any income that is not subject to tax
under this chapter when earned by the regulated investment company. For the purposes of computing the
deduction for dividends paid, the provisions of sections 852(b)(7) and 855 of the Internal Revenue Code
of 1986, as those sections may be amended or renumbered, apply. A regulated investment company is
not allowed a deduction for dividends received as defined in sections 243 through 245 of the Internal
Revenue Code of 1986, as those sections may be amended or renumbered."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

1 NEW SECTION. **Section 4. Retroactive applicability.** [This act] applies retroactively, within the
2 meaning of 1-2-109, to tax years beginning after December 31, 2000.

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